

SS SS SCS SB 280 -- TORT REFORM

SPONSOR: Scott (Byrd)

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 10 to 8.

This substitute enacts various tort reform measures. In its main provisions, the substitute:

- (1) Requires state agencies that use a lawyer or law firm to obtain such services through open and competitive bids and prohibits state agencies from paying in excess of \$1,000 per hour for legal services (Sections 34.360 to 34.371);
- (2) Adds attorneys practicing pro bono at tax-exempt nonprofit community social services centers and physicians working in county jails to coverage from the State Legal Expense Fund (Section 105.711);
- (3) Expands immunity from civil liability for certain landowners adjoining public trails from only certain first classification counties to all political subdivisions (Section 258.100);
- (4) Allows a person's failure to wear a seat belt to be considered as evidence of comparative negligence in a lawsuit and to be admitted to mitigate damages of an insurer or party to the action (Section 307.178);
- (5) Provides that venue will be in the county where the cause of action accrued or the county where the office of the registered agent of the nonprofit corporation is maintained (Section 355.176);
- (6) Requires that claims for prejudgment and post-judgment interest in tort actions be calculated at an interest rate tied to the auction price of 52 week United States Treasury bills (Section 408.040);
- (7) Allows liens for health practitioners who provide medical services to patients injured by tortfeasors (Section 430.225);
- (8) Requires that venue in all tort actions, including torts for improper health care, but excluding suits against motor carriers, only be in the county where the cause of action accrued or the county where the defendant resides. Residence for a corporation is either the county where the registered agent is located or, if no such agent exists, then Cole County. In suits against corporations, venue will only be in the county where the cause of action accrued or the county of the corporation's residence.

Defendants are allowed to move for change of venue upon the adding of a new defendant if current venue would have been inappropriate if the new defendant had initially been named (Sections 508.010, 508.040, and 508.120);

(9) Requires courts to dismiss or transfer venue for a cause of action accruing outside the county in which the court is located if there is another more convenient venue. The determination of convenience is based on a number of enumerated factors. A motion to transfer venue may be filed within 90 days after the answer is due. A party filing a case in a county where none of the defendants reside or where the cause did not accrue will bear the burden of establishing that the pending forum is more convenient than a forum in which the defendants reside or the cause accrued (Section 508.075);

(10) Adds convenient forum to the list of objections that may be raised by motion whether or not that objection appears in the pleadings (Section 509.290);

(11) Allows discovery of a defendant's assets in tort actions only after a judge determines that the plaintiff has a submissible case on punitive damages, as defined in the substitute (Section 510.263);

(12) Allows orders granting or denying class certification and motions based on a more convenient forum to be appealed (Section 512.020);

(13) Establishes a \$50 million limit on supersedeas bonds if the appellant proves that it has unencumbered assets that equal or exceed the amount of the judgement in excess of \$50 million. If the appellant fails to maintain this level of assets or is purposely dissipating assets outside the ordinary course of business to avoid payment of the judgment, then the court may require a bond equal to the full amount of the judgment (Section 512.099);

(14) Sets the statute of limitations in actions to recover damages from injury caused by childhood sexual abuse at 10 years or the plaintiff turning 21 years of age or within three years of the date of discovering that the injury was caused by childhood sexual abuse, whichever occurs later (Section 516.600 and 537.046);

(15) Provides for joint and several liability for compensatory and noneconomic damages if a defendant is found to be 10% or more at fault, but makes defendants liable only for their portion of fault for punitive damages (Section 537.067);

(16) Requires mediation for all tort actions unless the court finds that mediation has no chance of success (Section 537.072);

(17) Limits liability of paddlesport outfitters for injury or death caused by inherent risks of paddlesport activities (Section 537.327);

(18) Requires an affidavit from a similarly-licensed professional supporting a cause of action for nonmedical claims of professional negligence (Section 537.530);

(19) Adds long-term care facilities licensed pursuant to Chapter 198, RSMo, (Convalescent, Nursing and Boarding Homes) to the definition of "health care provider" as used in Chapter 538 (Tort Actions Based on Improper Health Care) and modifies the definition of "punitive damages" to include exemplary damages and damages for aggravating circumstances (Section 538.205);

(20) Removes the words "per occurrence" to ensure that there is a single cap, and not multiple caps, for incidents of medical malpractice (Section 538.210);

(21) Makes it mandatory rather than discretionary that a court dismiss any medical malpractice claim for which the plaintiff fails to file the required supporting expert affidavit and limits extensions of time to file the affidavit to 90 days. The substitute also requires the expert to be licensed and actively practicing in substantially the same specialty as the defendant (Section 538.225);

(22) Prohibits statements, writings, or benevolent gestures expressing sympathy from being admissible as evidence of an admission of liability in a civil action. Statements of fault, however, will not be inadmissible (Section 538.227);

(23) Makes certain records, written proceedings, or documents produced by or through the activities of any state or federal agency from being admissible in certain civil, criminal and administrative proceedings against facilities licensed pursuant to Chapter 198 (Convalescent, Nursing and Boarding Homes) (Section 538.301);

(24) Includes a severability clause (Section 1); and

(25) Clarifies that the substitute only applies to cases filed after August 28, 2003 (Section 509.290).

FISCAL NOTE: Estimated Net Savings to General Revenue Fund of \$752,665 to Unknown in FY 2004, \$930,294 to Unknown in FY 2005, and \$958,203 to Unknown in FY 2006. Estimated Net Savings to

Highway Fund of Unknown in FY 2004, FY 2005, and FY 2006.

PROPOSERS: Supporters say that tort reform is necessary to help curb the increasing medical malpractice insurance rates or Missouri will lose too many doctors. Also, venue laws need to be changed to disallow venue-shopping, especially in suits against corporations.

Testifying for the bill were Senator Scott; Missouri State Medical Association; Metropolitan Medical Society of Kansas City; Missouri Chamber of Commerce; Missouri Hospital Association; Missouri Motor Carriers Association; Missouri Forest Products Association; St. Louis Area Business Health Coalition; National Federation of Independent Business; Missouri Association of Osteopathic Physicians and Surgeons; Missouri Academy of Family Physicians; and Associated Industries of Missouri.

OPPOSERS: Those who oppose the substitute say that capping damage awards to tort victims will not lower doctors' medical malpractice insurance premiums, and current venue statutes in Missouri work well.

Testifying against the bill were Kathleen Kalz-Meyer; Francis Stevich; Missouri Association of Trial Attorneys; and Patrick Hagerty.

Julie Jinkens McNitt, Legislative Analyst